

**FILED BY CLERK**

**MAY -2 2012**

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

NATIONAL INDEMNITY	)	
COMPANY, a corporation,	)	2 CA-CV 2011-0164
	)	DEPARTMENT A
Plaintiff/Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 28, Rules of Civil
MATTHEW RITTER and PATRICIA	)	Appellate Procedure
PFEIFFER, husband and wife; and	)	
RITTER LAW GROUP, LLC, an	)	
Arizona limited liability company,	)	
	)	
Defendants/Appellants.	)	

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APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV201100335

Honorable Boyd T. Johnson, Judge

DISMISSED

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Wees Law Firm, LLC  
By James F. Wees

Phoenix  
Attorneys for Plaintiff/Appellee

Ritter Law Group, LLC  
By Matthew A. Ritter

Florence  
Attorneys for  
Defendants/Appellants

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B R A M M E R, Judge.

¶1 Matthew Ritter, Patricia Pfeiffer, and Ritter Law Group, LLC (Ritters) appeal from the trial court’s ruling denying their motion to dismiss without prejudice. Because we lack jurisdiction over the appeal, we dismiss it. *Robinson v. Kay*, 225 Ariz. 191, ¶ 4, 236 P.3d 418, 419 (App. 2010).

### **Jurisdiction**

¶2 The Ritters argue this court has jurisdiction over the appeal “because it concerns a final judgment . . . that is effectively determinative of the underlying action.” *See* A.R.S. § 12-2101(A)(1). However, “[a]n order denying a motion to dismiss is an interlocutory, nonappealable order.” *Qwest Corp. v. Kelly*, 204 Ariz. 25, ¶ 3, 59 P.3d 789, 791 (App. 2002). We have no jurisdiction to hear a direct appeal from an interlocutory order. *State ex rel. Dep’t of Econ. Sec. v. Powers*, 184 Ariz. 235, 236, 908 P.2d 49, 50 (App. 1995). Appeal after judgment usually provides an adequate remedy for the denial of a motion to dismiss. *Polacke v. Superior Court*, 170 Ariz. 217, 218, 823 P.2d 84, 85 (App. 1991).

¶3 Alternatively, the Ritters urge us to accept special action jurisdiction over the matter. In general, we will not review by special action the denial of a motion to dismiss. *Maricopa Cnty. v. Superior Court*, 170 Ariz. 248, 250-51, 823 P.2d 696, 698-99 (App. 1991). Nonetheless, special action relief may be appropriate where the challenged ruling cannot be justified under any rule of law and where relief effectively will terminate

the litigation.<sup>1</sup> *Polacke*, 170 Ariz. at 218-19, 823 P.2d at 85-86. Our acceptance of special action review is discretionary, *N. Propane Gas Co. v. Kipps*, 127 Ariz. 522, 525, 622 P.2d 469, 472 (1980), and we accept jurisdiction of a special action challenging the denial of a motion to dismiss “only in limited circumstances, such as when the issue raised is of statewide importance,” *Qwest Corp.*, 204 Ariz. 25, ¶ 3, 59 P.3d at 791; *see also Taylor v. Jarrett*, 191 Ariz. 550, ¶ 5, 959 P.2d 807, 808 (App. 1998) (we accept jurisdiction in rare cases, such as when motion reveals absence of jurisdiction).

¶4 In this case, the Ritters argue the trial court erred by denying their motion to dismiss because service of process was untimely. They rely on the portion of Rule 4(i), Ariz. R. Civ. P., which provides that the court shall dismiss an action where service is not made within 120 days of filing the complaint. But they ignore the portion of the rule allowing the court alternatively to “direct that service be effected within a specified time,” Ariz. R. Civ. P. 4(i), contending instead that the court has “no judicial discretion on the matter.” Therefore, we cannot say the court’s ruling “cannot be justified under any rule of law,” *Polacke*, 170 Ariz. at 218-19, 823 P.2d at 85-86, nor do we find any other reason to accept special action jurisdiction.

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<sup>1</sup>The Ritters note a decision on the merits may “terminate the underlying litigation and avoid an otherwise unnecessary trial.” Of course, a party may argue special action relief would terminate the litigation any time a trial court denies a motion to dismiss, but the argument is not persuasive unless additional unusual circumstances exist, such as the absence of jurisdiction. *Polacke*, 170 Ariz. at 219, 823 P.2d at 86.

## Disposition

¶5 For the foregoing reasons, we dismiss the appeal for lack of jurisdiction and decline to exercise special action jurisdiction over this matter. In our discretion, we deny appellee's request for attorney fees, noting that nothing precludes the trial court from awarding attorney fees at the conclusion of the matter if appropriate.

/s/ J. William Brammer, Jr.  
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Presiding Judge

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge